

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

TONYA WARE, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 4:20CV1561 JCH
)	
NOVARTIS PHARMACEUTICALS)	
CORPORATION,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiffs’ Motion to Dismiss without Prejudice, filed March 9, 2021. (ECF No. 29). Defendant does not oppose the motion, provided the Court establishes the following two conditions on the refile of any asserted claims in the future: (1) that Plaintiffs will be required to pay Defendant’s costs and attorneys’ fees incurred in the current action if the claims are refiled; and (2) that Plaintiffs must file any subsequent case asserting these claims in the Eastern District of Missouri.

As relevant here, Fed.R.Civ.P. 41 provides as follows: “Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper.” Fed.R.Civ.P. 41(a)(2). The decision whether to allow a party voluntarily to dismiss a case rests upon the sound discretion of the Court. “In exercising that discretion, a court should consider factors such as whether the party has presented a proper explanation for its desire to dismiss; whether a dismissal would result in a waste of judicial time and effort; and whether a dismissal will prejudice the defendants.” *Hamm v. Rhone-Poulenc Rorer Pharmaceuticals, Inc.*, 187 F.3d 941, 950 (8th Cir. 1999) (internal citations omitted). “The

purpose of Rule 41(a)(2) is primarily to prevent voluntary dismissals which unfairly affect the other side. Courts generally will grant dismissals where the only prejudice the defendant will suffer is that resulting from a subsequent lawsuit.” *Paulucci v. City of Duluth*, 826 F.2d 780, 782 (8th Cir. 1987) (citations omitted).

Upon consideration of the foregoing, the Court finds dismissal without prejudice is warranted here. The Court will, however, impose upon said dismissal the two conditions requested by Defendant.

Accordingly,

IT IS HEREBY ORDERED that Plaintiffs’ Motion to Dismiss without Prejudice (ECF No. 29) is **GRANTED**.

IT IS FURTHER ORDERED that any subsequent case asserting the same claims as those here must be filed in the Eastern District of Missouri.

IT IS FURTHER ORDERED that Plaintiffs will be required to pay Defendant’s costs and attorneys’ fees incurred in the current action if the claims are refiled.

A separate Order of Dismissal shall accompany this Memorandum and Order.

Dated this 24th Day of March, 2021.

/s/ Jean C. Hamilton
UNITED STATES DISTRICT JUDGE